

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Video Description )  
of Video Programming )

MM Docket No. 99-339

**REPLY COMMENTS OF THE LEAGUE OF LATIN AMERICAN CITIZENS AND THE  
NATIONAL COUNCIL OF LA RAZA**

The League of United Latin American Citizens (LULAC) and the National Council on La Raza (NCLR) submit these reply comments in response to the Notice of Proposed Rulemaking seeking comment on proposals for mandating video description in the programming of major television broadcasters and larger multichannel video programming distributors.<sup>1</sup> LULAC is the largest and oldest Hispanic organization in the United States. LULAC advances the economic condition, educational progress, political influence, civil rights and well-being of Hispanic Americans through community-based programs operating at more than 700 LULAC councils nationwide. NCLR is the nation's largest Hispanic civil rights organization. NCLR annually serves over three million Hispanics through a formal network of "affiliates"--240 Hispanic community-based organizations which together serve 8 states, Puerto Rico, and the District of Columbia and serves as a voice for Hispanic Americans nationwide.

LULAC and NCLR are deeply concerned about the Commission's proposals to mandate video description because it would deprive the large Spanish-speaking community in the United States of a valuable and popular resource -- the Spanish audio track now carried on the SAP (Secondary Audio Programming) channel of broadcasters

<sup>1</sup> Implementation of Video Description of Video Programming, MM Docket No. 99-339 (rel. Nov. 18, 1999 (NPRM)).

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and cable operators.<sup>2</sup> The SAP, which would be used for video description, can be used for only one audio track. Additionally, imposing video description on digital DBS programming channels could displace the Spanish audio track now enjoyed and used by the Hispanic community. Organizations that submitted comments in the first round of this rulemaking make clear that the demand for video description is unknown and, indeed, the largest organization of the blind, the National Federation of the Blind, does not support mandated video description. Public policy is best served by using the scarce resource of audio tracks for services that the public and consumers--the marketplace--want.

**I. Mandated Video Description Would Deprive the Large Spanish-speaking Community of a Valuable and Popular Resource**

More than 17 million people in the United States speak Spanish at home<sup>3</sup> and studies predict that the Hispanic proportion of the U.S. populace will continue to increase. The Spanish audio track of broadcast programming and cable programming networks provides the Hispanic community with important educational and entertainment benefits. Today, many broadcast programs and a significant number of cable programming networks provide a Spanish audio track. For example, approximately 90% of the program schedule of HBO (Home Box Office) is available with a Spanish language audio track. At least a portion of the programming schedules of the following networks is available with a Spanish language audio track: ABC, CBS, NBC, Fox, Bravo, Cartoon Network, Cinemax, Comedy Central, Encore, The Movie Channel, the Sci-Fi Channel, the Romance channel, Showtime, Starz!, TNT, and USA. The National Association of Broadcasters' (NAB) survey of television broadcast stations

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<sup>2</sup> The Commission has sought comment regarding the impact of mandated video description on Spanish-language use of the SAP. NPRM ¶ 30.

<sup>3</sup> 1990 U.S. Census, Table 4: "Languages Spoken at Home by Persons 5 Years and Over."

reveals that stations use their SAP channel "primarily for Spanish language programming."<sup>4</sup>

The widespread use of Spanish audio is driven by demand by the Spanish-speaking community. While many people who speak Spanish in the home also speak English, they may prefer to watch television with Spanish audio for a variety of reasons. For example, Spanish audio may be preferred if the television topic is technical or medical, i.e., has a special vocabulary. Spanish audio can provide a better understanding of the nuances of plot or comedy, and gives a different perspective such as in news coverage. Sometimes Spanish audio is more consistent with the flavor of the program itself, such as soccer. Stations and programming networks are offering what their audience wants, and it would be a serious mistake to deprive this substantial television-watching audience of the important feature of Spanish audio.

Mandating video description would deprive the Hispanic community of the Spanish audio track because of technical limitations. Simply put, the Secondary Audio Programming channel (SAP) of broadcast and cable programmers is capable of carrying only one audio "stream" per television channel.<sup>5</sup> To mandate video description on that channel requires that it be used exclusively for video description, no matter what the demand for other audio uses may be.

Approximately 1.6 million television viewers receive their programming via C-band direct-to-home satellite services. The Hispanic community is unable to receive a Spanish language audio track for these services since it would need to be carried on an unencrypted audio subcarrier, which would contain the entire program soundtrack, leaving the audio of the programming service in the clear and compromising the security of the television service signal. The same problem would be true for video description carried on such an unencrypted audio carrier. As the Satellite Broadcasting and

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<sup>4</sup> Comments of the National Association of Broadcasters at 21; Appendix, 2000 SAP Channel Survey at 6-7.

<sup>5</sup> Comments of the Motion Picture Association of America, Inc. (MPAA), at iv, 22; Comments of the National Cable Television Association at 11-14.

Communications Association points out,<sup>6</sup> protecting the copyrighted works of programming services and other copyright owners should not be so compromised.

Finally, even in the digital world, bandwidth is not infinitely expandable. Reliable digital compression allows for a fixed number of programming services to be carried on digital direct-to-home satellite transponders. Since this Ku-band technology allows more than two encrypted audio channels, some programming services have created a Spanish-language audio track for the Hispanic community. As DIRECTV, the largest provider of Ku-band direct-to-home programming services, points out, 80% of the video channels on its platform that have a third track devote it to a Spanish-language track for pay per view movies and local television channels.<sup>7</sup> Programmers choose to add a third audio channel do so only when, again, there is demand for such a service. Adding audio channels decreases the number of programming services reliably carried on that satellite transponder. If video description were mandated for each programming channel on a transponder, there would be fewer programming services available to the consumer. The displaced service could well have an appeal to consumers far greater than the demand for video description. The demand for Spanish audio is here today, and growing: it should not be so displaced.

## **II. Demand and Need for Video Description by the Visually Impaired Remains Uncertain**

Although the Commission estimates that the number of persons with visual disabilities ranges from more than eight million to nearly twelve million,<sup>8</sup> others place the number as much smaller. One study places the number at 1.295 million,<sup>9</sup> another at

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<sup>6</sup> Comments of the Satellite Broadcasting and Communications Association at 5-6.

<sup>7</sup> Comments of DIRECTV at 2-3.

<sup>8</sup> NPRM ¶ 5.

<sup>9</sup> Comments of MPAA at 19.

6.5 million.<sup>10</sup> And while the Commission concludes that a substantial percentage of aging Americans has visual disabilities,<sup>11</sup> a study by the Social Security Administration's Office of Research Evaluation & Statistics determined that only 132,935 people receive social security benefits based on disorders of the eye, as of December 1998.<sup>12</sup> All of these estimates are substantially below the more than 17 million members of the Hispanic community who speak Spanish at home.

Secondly, even those with visual impairments do not uniformly support mandated video description. In its initial comments, the National Federation of the Blind, (NFB) which describes itself as America's largest and most active organization of the blind, describes video description as "controversial" among the one million legally blind persons in the U.S. – offering yet another estimate, as well, of the target audience. Indeed, this organization states that, of those one million, only 1 in 10 cannot see anything at all.<sup>13</sup> The NFB adds that many blind people find video description "irritating" or "annoying".<sup>14</sup> Its members have passed a resolution opposing mandated video description.<sup>15</sup> In fact, the NFB adds that it has "no doubt" that Spanish-speaking blind persons would prefer to have the SAP channel used for Spanish dialogue,<sup>16</sup> a position we support.

Commenters also offered evidence that there is no compelling need for video description. The MPAA cited a study that showed that 97% of the visually impaired watch television at least two or three times a week, compared with 95% of the general population.<sup>17</sup> Experience in the home video market also points to the lack of demand

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<sup>10</sup> Comments at NAB at 27, fn. 43.

<sup>11</sup> NPRM ¶ 6.

<sup>12</sup> Comments of MPAA 19.

<sup>13</sup> Comments of the National Federation of the Blind (NFB) at 1.

<sup>14</sup> *Id.* at 2, 4.

<sup>15</sup> NFB Comments at 3.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> Comments of MPAA at 10.

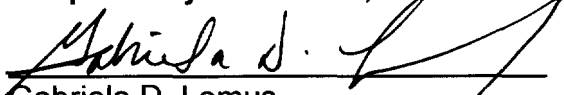
for video description: few copies of MPAA-member films having video description have been sold, even though the visually impaired patronize video stores at the same rates as the general public.<sup>18</sup>


Unless and until the Commission develops clear findings supporting a substantial demand and need for, and the usefulness of, video description for the visually impaired, it is simply bad public policy to monopolize the SAP for this service while displacing Spanish language audio, a service for which there is wide demand.

### **III. Conclusion**

LULAC and NCLR urge the Commission not to deprive the large Spanish-speaking community of the U.S. of a resource they enjoy and use: Spanish language audio tracks of broadcast and other networks. In contrast, the marketplace has yet to demonstrate that mandated video description would be of use or is in demand. More study is needed to determine how the Commission could assist the visually impaired. We urge the FCC not to adopt mandated video description.

**Respectfully submitted,**

  
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<sup>18</sup> Id. at 25-26.

## CERTIFICATE OF SERVICE

The undersigned, Gabriela Lemus, hereby certifies that this 24th day of March, 2000, I have caused a true and correct copy of the foregoing Reply Comments of the League of Latin American Citizens and The National Council of La Raza to be served via U.S. first class mail, postage prepaid, on the following:

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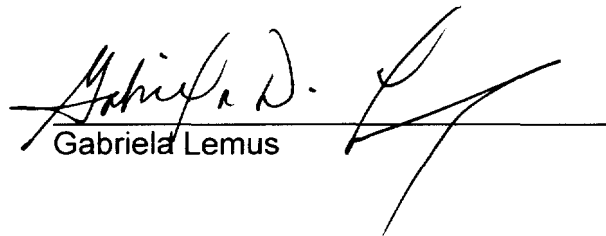
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